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Forty-eighth session
Item 145 of the provisional agenda*

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FIFTH SESSION

Note by the Secretary-General

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* A/48/150 and Corr.1.

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I. INTRODUCTION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, in accordance with its statute annexed thereto, as subsequently amended, held its forty-fifth session at its permanent seat at the United Nations Office at Geneva from 3 May to 23 July 1993.

2. The Commission's agenda for its forty-fifth session consisted of the following items:

1. Organization of work of the session.

2. State responsibility.

3. Draft code of crimes against the peace and security of mankind.

4. The law of the non-navigational uses of international watercourses.

5. International liability for injurious consequences arising out of acts not prohibited by international law.

6. Programme, procedures and working methods of the Commission and its documentation.

7. Cooperation with other bodies.

8. Date and place of the forty-sixth session.

9. Other business.

3. The work of the Commission during its forty-fifth session is described in its report to the General Assembly. 1/ Chapter I of the report is entitled "Introduction". Chapter II is entitled "Draft Code of Crimes against the Peace and Security of Mankind" and concerns the question of a draft statute for an international criminal court. The text of a draft statute worked out by a working group of the Commission is annexed to the report. Chapter III relates to the topic "International liability for injurious consequences arising out of acts not prohibited by international law". Chapter IV is devoted to the topic "State responsibility" and contains the text of six draft provisions on that topic with commentaries thereto adopted at the forty-fifth session of the Commission. Chapter V concerns the topic "The law of the non-navigational uses of international watercourses". Chapter VI deals with matters relating to the programme, procedures and working methods of the Commission and its documentation, as well as cooperation with other bodies, and also refers to certain administrative and other matters.

1/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 10 (A/48/10).

4. For the convenience of the delegates to the forty-eighth session of the General Assembly, the draft articles provisionally adopted by the Commission at its forty-fifth session on the topic of State responsibility are reproduced below.

II. DRAFT ARTICLES ON STATE RESPONSIBILITY

PART TWO

Paragraph 2 of article 1*

2. The legal consequences referred to in paragraph 1 are without prejudice to the continued duty of the State which has committed the internationally wrongful act to perform the obligation it has breached.

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Article 6

Cessation of wrongful conduct

A State whose conduct constitutes an internationally wrongful act having a continuing character is under the obligation to cease that conduct, without prejudice to the responsibility it has already incurred.

Article 6 bis

Reparation

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, as provided in articles 7, 8, 10 and 10 bis, either singly or in combination.

2. In the determination of reparation, account shall be taken of the negligence or the wilful act or omission of:

(a) the injured State; or

(b) a national of that State on whose behalf the claim is brought

which contributed to the damage.

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* Article 1 was adopted at the thirty-fifth session of the Commission (see Yearbook of the International Law Commission, 1983, vol. II (Part Two), p. 42).

3. The State which has committed the internationally wrongful act may not invoke the provisions of its internal law as justification for the failure to provide full reparation.

Article 7

Restitution in kind

The injured State is entitled to obtain from the State which has committed an internationally wrongful act restitution in kind, that is, the re-establishment of the situation that existed before the wrongful act was committed, provided and to the extent that restitution in kind:

(a) is not materially impossible;

(b) would not involve a breach of an obligation arising from a peremptory norm of general international law;

(c) would not involve a burden out of all proportion to the benefit which the injured State would gain from obtaining restitution in kind instead of compensation; or

(d) would not seriously jeopardize the political independence or economic stability of the State which has committed the internationally wrongful act, whereas the injured State would not be similarly affected if it did not obtain restitution in kind.

Article 8

Compensation

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act compensation for the damage caused by that act, if and to the extent that the damage is not made good by restitution in kind.

2. For the purposes of the present article, compensation covers any economically assessable damage sustained by the injured State, and may include interest and, where appropriate, loss of profits.

Article 10*

Satisfaction

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act satisfaction for the damage, in particular moral damage, caused by that act, if and to the extent necessary to provide full reparation.

2. Satisfaction may take the form of one or more of the following:

(a) an apology;

(b) nominal damages;

(c) in cases of gross infringement of the rights of the injured State, damages reflecting the gravity of the infringement;

(d) in cases where the internationally wrongful act arose from the serious misconduct of officials or from criminal conduct of officials or private parties, disciplinary action against, or punishment of, those responsible.

3. The right of the injured State to obtain satisfaction does not justify demands which would impair the dignity of the State which has committed the internationally wrongful act.

Article 10 bis

Assurances and guarantees of non-repetition

The injured State is entitled, where appropriate, to obtain from the State which has committed an internationally wrongful act assurances or guarantees of non-repetition of the wrongful act.

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* The substance of article 9 (Interest) as proposed by the Special Rapporteur was incorporated in paragraph 2 of article 8. Hence the gap in the sequence of articles.

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GENERAL ASSEMBLY
Forty-eighth session
Item 80 of the provisional agenda*
MAINTENANCE OF INTERNATIONAL SECURITY

SECURITY COUNCIL
Forty-eighth year

Letter dated 10 August 1993 from the representatives of the Permanent Missions of Kazakhstan, Kyrgyzstan, the Russian Federation and Tajikistan to the United Nations addressed to the Secretary-General

On instructions from our Governments, we have the honour to transmit the texts of the Declaration on the Inviolability of Frontiers (see annex I), an announcement of measures for the normalization of the situation on the Tajik-Afghan frontier (see annex II) and a letter addressed to you by the Ministers for Foreign Affairs of the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Russian Federation, the Republic of Tajikistan and the Republic of Uzbekistan (see annex III). These documents were adopted at a meeting of the heads of State of Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan, held in Moscow on 7 August 1993.

We should be grateful if you would have this letter and the annexes circulated as official documents of the General Assembly, under item 80 of the provisional agenda, and of the Security Council.

Permanent Representative of the
Republic of Kazakhstan to the
United Nations
(Signed) A. ARYSTANBEKOVA

Acting Permanent Representative of
the Republic of Kyrgyzstan to the
United Nations
(Signed) T. CHINETOV

Permanent Representative of the
Russian Federation to the
United Nations
(Signed) Y. VORONTSOV

Permanent Representative of the
Republic of Tajikistan to the
United Nations
(Signed) L. KAYUMOV

* A/48/150.

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Annex I

DECLARATION ON THE INVIOLABILITY OF FRONTIERS

The signatories to this Declaration,

Reaffirming their commitment to the Charter of the United Nations, the principles of the Conference on Security and Cooperation in Europe and the founding instruments of the Commonwealth of Independent States,

Emphasizing that the inviolability of frontiers and the territorial integrity of States are basic principles in international relations and their observance is an essential condition for maintaining international peace, security and stability,

Recalling that, under the Charter of the United Nations, the territory of States is inviolable and may not be the object of the use of force,

Concerned at the serious violations of their frontiers committed by countries which are not part of the Commonwealth of Independent States,

On the basis of the inherent right of individual or collective self-defence under Article 51 of the United Nations Charter,

Declare the following:

1. The signatories to this Declaration consider that ensuring the inviolability of their frontiers is of vital mutual interest and is a common duty to be carried out on a multilateral or bilateral basis.

2. The signatories to this Declaration will continue to view any and all encroachments upon their frontiers as illegal acts which are grounds for adopting reciprocal and commensurate measures under international law, including the use of armed force, as a form of individual or collective self-defence. They shall work together to prevent and put an end to any outside attempt to encroach upon the territory of any of the States which are signatories to this Declaration.

3. The signatories to this Declaration will continue to put an end to any action carried out on their territory by individuals, groups or organizations which is aimed at breaching the inviolability of the frontiers of these States.

4. The signatories to this Declaration shall be collectively responsible for the inviolability of their frontiers with third-party States. At the same time, none of the signatories to this Declaration has the obligation to unilaterally ensure the security of the frontiers of another State.

5. The signatories to this Declaration reaffirm their willingness, by means of negotiations involving all the parties concerned, to find a way to terminate and prevent armed conflicts along frontiers.

6. The internal stability of the States which are signatories to this Declaration is a prerequisite condition of the security of their frontiers. To this end, each State shall take appropriate steps to strengthen its democratic institutions and achieve national harmony on the basis of respect for human rights and fundamental freedoms.

7. The signatories to this Declaration are counting on neighbouring States and the international community in general for their support and understanding of the situation.

For the Republic of Kazakhstan	For the Russian Federation	For the Republic of Kyrgyzstan	For the Republic of Tajikistan	For the Republic of Uzbekistan
N. NAZARBAYEV	B. YELTSIN	A. AKAYEV	E. RAKHMONOV	I. KARIMOV

Annex II

ANNOUNCEMENT OF MEASURES FOR THE NORMALIZATION OF THE SITUATION ON THE TAJIK-AFGHAN FRONTIER

The heads of State of the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Russian Federation, the Republic of Tajikistan and the Republic of Uzbekistan met in Moscow on 7 August 1993 in order to elaborate measures to bring about the normalization of the situation on the Tajik-Afghan frontier.

Those participating in the meeting expressed their deep concern at the serious aggravation of the situation. Particularly alarming are the actions by fighters from the Tajik opposition and the individual Afghan armed groups that support them and the systematic incursions into the territory of Tajikistan, which have resulted in an increasing number of victims among the civilian population, frontier guards and other military personnel.

The heads of State proclaim the following:

1. The Republic of Kazakhstan, the Republic of Kyrgyzstan, the Russian Federation and the Republic of Uzbekistan, guided by the founding instruments of the Commonwealth of Independent States and bilateral agreements with the Republic of Tajikistan, consider the Tajik-Afghan frontier as part of the common frontier of the Commonwealth of Independent States.

2. All urgent and necessary measures to ensure security on the Tajik-Afghan frontier will be adopted and, to this end, the contingent guarding the frontier will be reinforced with frontier troops and armed forces from Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan.

3. The Republic of Tajikistan will receive additional military, economic and humanitarian assistance, including assistance to enable it to expedite the establishment of national armed forces and frontier troops capable of independently defending the sovereignty and territorial integrity of its State.

4. If armed attacks from the outside continue, reciprocal and commensurate measures will be taken to stop them, as envisaged by the Treaty on Collective Security concluded between the countries of the Commonwealth of Independent States and by bilateral agreements with Tajikistan, and in accordance with the right of individual or collective self-defence provided for in Article 51 of the Charter of the United Nations.

5. The States present at the meeting believe a political settlement is crucial and wholly possible, and they are willing to participate actively in the search for such a solution.

6. The Government of the Republic of Tajikistan will receive full support in its resolve to use all the political means at its disposal in order to further the peace process and engage in dialogue with political forces of differing views with a view to attaining civil and national harmony and establishing a basis for the democratic development of the country.

7. The willingness to build good-neighbourly relations and cooperation with Afghanistan in the interests of peace and stability in the region is confirmed. At the same time, it is expected that Afghanistan will adopt urgent measures banning the use of Afghan territory to launch hostile actions against neighbouring States and interfere in their internal affairs.

Those participating in the meeting appeal to the international community to support all efforts aimed at normalizing the situation on the Tajik-Afghan frontier and at reaching a political settlement in Tajikistan. They also hope that all the countries of the region will promote the peace process and urge the armed Tajik opposition to put an end to the bloodshed and begin constructive dialogue. They are open to cooperation with these countries and are ready to send their special representatives to conduct negotiations to find ways to accelerate a peaceful settlement.

The heads of these five States are counting on the United Nations and the Conference on Security and Cooperation in Europe to support their efforts and to send United Nations observers to the Tajik-Afghan frontier and provide humanitarian and technical assistance.

Those participating in the meeting appeal to all States members of the Commonwealth of Independent States to provide Tajikistan with assistance in dealing with the aftermath of the conflict.

President of the Republic of Kazakhstan	President of the Republic of Kyrgyzstan	President of the Russian Federation	President of the Supreme Council of the Republic of Tajikistan	President of the Republic of Uzbekistan
N. NAZARBAYEV	A. AKAYEV	B. YELTSIN	E. RAKHMONOV	I. KARIMOV

Annex III

MESSAGE FROM THE MINISTERS FOR FOREIGN AFFAIRS OF KAZAKHSTAN, KYRGYZSTAN, THE RUSSIAN FEDERATION, TAJIKISTAN AND UZBEKISTAN ADDRESSED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS, MR. BOUTROS BOUTROS-GHALI

7 August 1993

Sir,

Our message to you is necessitated by the serious aggravation of the situation on the Tajik-Afghan frontier. The matter has led to large-scale attacks against the territory of the Republic of Tajikistan - a sovereign State, which is a Member of the United Nations. Recently, specific military operations have been undertaken aimed at breaching the frontier and stirring up armed conflict in Tajikistan. As a result of shelling and attacks by fighters from the Tajik opposition and individual Afghan armed groups that support them, there has been an increasing number of victims among the peaceful population and our soldiers taking part in defending the State frontier of Tajikistan are dying.

Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan signed the Treaty on Collective Security within the framework of the Commonwealth of Independent States (CIS). In accordance with this Treaty and in implementation of the right of individual and collective self-defence under Article 51 of the Charter of the United Nations, we have taken a decision to provide Tajikistan with emergency supplementary assistance, including military assistance.

Our choice is not methods based on the use of force, but rather the search for a political settlement. We believe that the possibilities for such a settlement exist. We hope that in Afghanistan also a responsible approach will prevail and effective steps will be taken to prevent armed incursions into the territory of Tajikistan.

We are open to a broad and constructive dialogue with Afghanistan, the other States of the region and all parties concerned.

We address an urgent appeal to you to assist our efforts in this area.

Taking into account the threat to peace and security in the region, we request the Security Council to consider immediately the critical situation that has arisen on the Tajik-Afghan frontier and to take measures to ensure its inviolability, including the possible sending of United Nations observers.

Minister for Foreign Affairs of the Republic of Kazakhstan	Minister for Foreign Affairs of the Republic of Kyrgyzstan	Minister for Foreign Affairs of the Republic of Tajikistan	Minister for Foreign Affairs of the Republic of Uzbekistan	Minister for Foreign Affairs of the Russian Federation
T. SULEIMENOV	E. KARABAEV	R. ALIMOV	S. SAIDKASYMOV	A. KOZYREV